Supreme Court, U.S.
FILED

(1) 96 171 MAY 30 1996

No. OFFICE OF THE CLERK

IN THE

Supreme Court Of The United States

October Term, 1995

DENNIS R. NELSON
Petitioner

vs.

TERRI L. NELSON AKA TERRI L. MARTIN
STATE OF OREGON
STATE OF WASHINGTON
Respondent(s)

ON PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERITORARI

DENNIS R. NELSON
Private Attorney General
Pro Se, Per Act of Congres
14809 SE Valencia Dr., #54
Vancouver, WA 98684
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45 pp

QUESTION (S) PRESENTED

Can a Citizen act as a Private Attorney General (title 28 U.S.C. § 1343) and seek enforcement of the **Necessary and Proper Clause**, the **Full Faith and Credit Clause**, and the **Supremacy Clause,** under Title 42 U.S.C. § 1983, against a person and two States, when said person has used the full power and authority of two States, to jointly deprive **Fourteenth Amendment Rights**, who is in joint participation at the present in an interstate agreement that violates **Equal Protection Rights** of the **Full Faith and Credit Clause**?

Can the Federal District Court declare unconstitutional and void on its face a State Court Judgment under Title 42 U.S.C. § 1983?

Can the State of Washington enforce the Judgment rendered in Oregon pursuant to the facts of this complaint?

Did the Ninth Circuit properly rule that the District Court lacked subject matter jurisdiction in such a case? Furthermore, is such a ruling consistent with Congresses instruction to Federal Courts to interpret civil rights statutes broadly?

LIST OF PARTIES

The proceedings in United States District Court in Portland, Oregon involved Terri L. Nelson, AKA, Terri L. Martin, State of Oregon and State of Washington.

Only the State of Oregon, represented by **Kendal M. Barnes**, *AAG*, responded within the time as set forth in the summons. The State of Washington subsequently, entered this case pursuant to motion by the State of Oregon, **Michael Cannady**, *Esq*, for **Daniel Radin**, Esq., to appear *Pro Hac Vice*. Only the State of Oregon, **Richard D. Wasserman**, *AAG* and the State of Washington, **Daniel Radin**, *Esq*, proceeded in the United States Court of Appeals case. **Terri L. Nelson, aka, Terri L. Martin**, and **Roland A. Johnson**, *Esq*, did not participate in the Court of Appeals case below.

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OPINIONS BELOW

The opinion of the Court of Appeals is set forth in the memorandum of the Court and appears in *appendix C* to this petition. Judgment of the Court of Appeals appears in *appendix D* to this petition and Judgment by the District Court appears in *appendix B* to this Petition *(appendix E,F,G,H,I,J have been added to petition)*.

JURISDICTION

The judgment of the District Court was entered under the jurisdiction of Title 28 U.S.C. § 1343. The judgment of the Court of Appeals was entered under the jurisdiction of Title 28 U.S.C. § 1291 on the date, March 2nd 1996. The petition for of writ certiorari is filed within ninety days of that judgment. This court's jurisdiction is invoked under Title 28 U.S.C. § 1254 (1). Now, if it is the case that gives jurisdiction *(pursuant to the intent of congress)* and a Federal question of public interest within the limits of Art III falls within the "Case and Controversies" of judicial power to review and invalidate as unconstitutional both Federal and State action, then the complaint is set forth in *appendix A* for the Courts review on the issue of subject matter jurisdiction of petitioners civil rights claim.

CONSTITUTIONAL PROVISIONS

Title 42 U.S.C. § 1983, civil action for deprivation of rights.

> **Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the**

District of Columbia subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia

STATEMENT OF THE CASE

The United States District Court in Portland, Oregon accepted this complaint as set for in *appendix A* filed September 12, 1994. United States Magistrate Findings and Recommendation, November 22, 1994,*(appendixE)* recommended dismissal of Defendant, Terri L. Nelson, aka, Terri L. Martin, on the grounds that the complaint failed to allege Defendant a private citizen, was acting under color of State law. Therefore, granting Defendant's motion to dismiss for failure to state a claim on December 28, 1994,*(appendix F)* by the Article III Judge.

The Magistrates Findings and Recommendation of March 15, 1995,*(appendixG)* states that Plaintiff is unable to state a claim against Defendant, State of Oregon. However, finds that plaintiff could state a claim for injunctive relief against the individual judges, which the Plaintiff alleges were involved in the divorce action. Further noting, that any claim against the judges would relate directly to actions taken in the

divorce action and would be bared by judicial immunity. On April 10, 1995,*(appendixH)* the Article III Judge granted the State of Oregon's motion to dismiss.

The Magistrates Findings and Recommendation April 17, 1995,*(appendixI)* finds that the State of Washington's Pro Hac Vice motion to dismiss should be granted due to failure to state a claim against Defendant. On May 17, 1995,*(appendixJ)* the Article III Judge granted the State of Washington's motion to dismiss.

United State's District Court in Eugene, Oregon, enters a judgment on August 15, 1995, by Christy Weller, Deputy *(appendixB)*.

United States Court of Appeals for the Ninth Circuit finds in memorandum *(appendixC)* that the District Court below lacks subject matter jurisdiction. Notice by Plaintiff on March 16, 1996, in the Ninth Circuit Court of Appeals seeks review by Certiorari in the Supreme Court of the United States.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted when the petition presents an issue resolved by implication, by this Court, but not specifically and unequivocally decided by this Court. This Court is requested to settle a question, which is confusing. The interpretation of the Civil Rights Statute, as it pertains to Private Citizens, States and Constitutional Provisions, under the Jurisdictional Statute of Title 28 U.S.C. § 1343, and the Federal Courts standing to declare unconstitutional a State Court Judgment? Furthermore, does the Civil Rights Statute give citizens the Right to inform the United States Federal

authorities of violations of Federal law and entitle them to a meaningful opportunity to be heard?

It is obvious that the Federal government does not have jurisdiction everywhere. Now, where does it have jurisdiction? Article I, Sec. 8, Part 18 of the U.S. Constitution should answer that question. Petitioner's argument is simply Article I, Sec. 8, Part 18 of the U.S. Constitution guarantees certain rights. Among these, are the Right to Act in a Private Attorney General capacity per Act of Congress, to enforce Congressional Civil Rights Policies, to adjudicate, pursuant to the **Supremacy** clause the **"Necessary and Proper"** clause of the U.S. Constitution in **Federal Court** regarding **"Public Acts"**, and to petition for the **"Full Faith and Credit"** of these **"Acts"**. by Art III Judges and including States.

Title 42 U.S.C. § 1983 was intended by Congress to abolish common law immunity for depravation of civil rights in a limited class of cases and to protect fundamental freedoms of citizens guaranteed by constitutional provisions see Marburg vs Madison. 5 U.S. (1 Cranch) 137, 163, (1803); Hafer vs Melo, 112 S Ct. 358 (1991). Such provisions would include affirmative Constitutional duties, Privileges and Immunities guaranteed by Sections 1 and 2 of Article IV to the Constitution, and the First and Fourteenth Amendment. Moreover, under Article VI of the Constitution, valid Federal statutes, such as Title 28 U.S.C. § 1738 are declared to be

> **...the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.**

Now when we combine Supremacy Clause with the "Necessary and Proper" clause of Article 1 Sec. 8, Part 18 Congress has Power "Vested" by the Constitution to preempt State Authority and the Eleventh Amendment. Congress can give this broad Power and Authority to Private Parties to vindicate Public Rights (called Private Attorney General) see Associated Industries V. Ickes. 134 F.2nd 694, 704 (1943).

Title 42 U.S.C. § 1983 is appropriate legislation to enforce the Fourteenth Amendment and power to preempt the Eleventh Amendment under Section 5 of that Amendment. Congress included no immunity provisions in Title 42 U.S.C. § 1983 and actions under 1983 for prospective relief, such as injunctions or declaratory judgments, are distinguishable for immunity purposes from actions for damage's against States see Hafer vs Melo, 112 S Ct. 358 (1991).

Judges in official capacity suits are subject to 1983 actions for unconstitutional judicial action Pulliam V Allen, 466 U.S. 522 (1984). Judges are not immune from liability for declaratory or injunctive relief regarding **"Non-judicial action, i.e., actions not taken in a judges judicial capacity"** see Mireles V. Waco, 112 S Ct. 286, 288 (1991).

Section 1983 does not require that a person act affirmatively to the deprive rights, action under color or state law may be an omission Thurman V City of Torrington, 595 F. Supp. 1521 (D. Conn. 1984). If the underlining right the plaintiff seeks to vindicate imposes a duty to act Estelle V Gamble, 429 U.S. 97 104-05 (1976).

Furthermore, Title 42 U.S.C. § 1983 can be based on purely statutory violations of Federal law. In a 1983 action State law and State immunity can stand only when said law

and immunity is not inconsistent with Federal law. Article IV of the Constitution has preempted any Eleventh Amendment immunity and the Federal court has an affirmative constitutional duty pursuant to Title 28 U.S.C. § 1738 (The same duty as each State in fact) to strike down any judgment that would be void throughout the nation and to extend no faith and Credit to any **(corum non judice)** judgment, rendered without the equal protection of the law.

Moreover, this case involves an overlapping of both *Property* and *Liberty* interests of **Due Process** and **Equal Protection** Rights as two independent and distinct guarantees. This Court has upheld these principles in the followings cases: see : Cleveland Board of Education V. LaFleur, 414 U.S. 632, 639-640 (1974); Meyer V. Nebraska, 262 U.S. 390, 399-401 (1923); Pierce V. Society of Sister, 268 U.S. 510, 534-535 (1925);Price V. Massachusetts, 321 U.S. 158, 166 (1944); Roe V. Wade, 410 U.S. 113,152-153,(1973); Wisconsin V. Yodel, 406 U.S. 113, 152-153 (1973); Stanley V. Illinois, 405 U.S. 645,651 (1972); Ginsberg V. New York, 390 U.S. 629, 639 (1968); Griswold V. Connecticut, 381 U.S. 497 (1965); Poe V. Ullman, 367 U.S. 497, 542-544, 549-553 (1961); Loving V. Virginia, 388 U.S. 1,12 (1967); May V. Anderson, 345 U.S. 528,533 (1953); Sinner V. Oklahoma ex rel. Williamson, 316 U.S. 535, 541 (1942).

Now, an important function of the referred to case law, is to make State governments maximize safeguards over legal protective interests of citizenship.

Summarizing, plaintiff seeks a Federal remedy, pursuant to Act of Congress, Title 28 U.S.C. § 1343, to address injuries and to act in a Private Attorney General capacity to enforce congressional civil rights policies.

See Associated Industries V. Ickes, 134 F.2nd 694, 704 (1943) ***Private Attorney General Issue***.

See Senate Report, (Judiciary Committee) No 94-1011 (1976) ***Citizen interest issues***.

See Board of Regents V. Roth, 408 U.S. 564,577 (1972) ***A legitimate claim of entitlement issue***.

See Rakas v. Illinois, 439 U.S. 128,144 (1978) ***Concepts of property law and societal understanding issue***.

See Marburg V. Madison, 5 U.S. (1 Cranch) 137,163 (1803) ***Right to claim the protection of law issue***.

See Hafer v. Melo, 112 S.Ct. 358 (1991) ***Acts outside authority; Acts necessary to performance of governmental functions issue.***

See Lugar V. Edmondson Oil Co, 457 U.S. 922 (1981) ***Private Party 1983 Action Issue***.

See Henry V. First Nat. Bank of Clarksdale, 595 F.2 d 291, 299 (1979) ***Private Party 1983 Action Issue***.

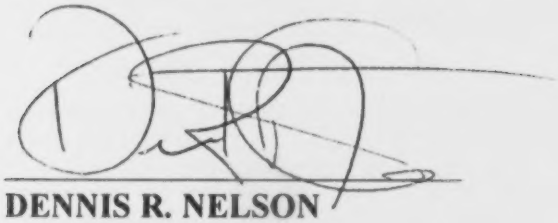
Therefore, a private party, which interferes with Fourteenth Amendment rights by preventing the State from granting equal treatment, or by causing the State to deprive a citizen of their Constitutional rights, is sufficient State action within the power of Congress to remedy, under Section 5 of the Fourteenth Amendment, and Title 42 U.S.C. § 1983, pursuant to and in conjunction with Title 28 U.S.C. § 1343, the civil rights jurisdictional Statute.

CONCLUSION

The Petition for a Writ of Certiorari should be Granted.

Dated May 28, 1996

Respectfully submitted



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Appendix A

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FILED SEP 12, 1994

IN THE UNITED SATE DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENNIS R. NELSON,
Plaintiff

Civil No. 94-1097-AS

vs.

COMPLAINT

TERRI L. NELSON, NKA
TERRI L. MARTIN
STATE OF OREGON
STATE OF WASHINGTON
Defendants

PLAINTIFF DEMANDS
A JURY TRAIL

JURISDICTION

This cause of action is brought by Plaintiff under title 42 U.S.C. § 1983 for redress of the Equal Protection clause and Due Process Clause of the Fourteenth Amendment to the United State Constitution. For redress of a deprivation under color of law of a right, privilege or immunity secured to Plaintiff by the First and Fourteenth Amendments to the United States Constitution.

Declaratory relief is sought pursuant to 28 U.S.C. §§ 2201 and 2202 and the Full Faith and Credit Clause Article IV and I of the Constitution. The jurisdiction of this court is invoked under title 28 U.S.C. § 1343

Appendix A

PARTIES

1. Dennis R. Nelson is a citizen of the United States and resident of the County of Clark, State of Washington, 3100 S.E. 168th Avenue, Apt. 173, Camas, Washington 98607.

2. Terri L. Nelson nka, Terri L. Martin is a citizen of State of Oregon, 173 Pike Street, Glide, Oregon 97443.

3. State of Oregon, Circuit Court for Douglas County, Case No. 91DO1249DS, Justice Building, 1036 S.E. Douglas, Roseburg, Oregon 97470.

   The following judges have participated in this case No. 91DO1249DS and entered orders:

   A. Joan G. Seitz - Circuit Court Judge
   B William L. Lasswell - District Court Judge
   C. Robert C. Milikan - District Court Judge
   D. Lane W. Simpson - District Court Judge
   E. Ronald Schenck - Circuit Court Judge
   F. Michael J. Gillespie - District Court Judge

4. State of Washington, Office of Support Enforcement for Clark County, Case No. 1054933, Enforcement Officer B. Montgomery, 111 W. 39th Street, Vancouver, Washington 98662.

Appendix A

PRELIMINARY STATEMENT

5. The validity of a judgment depends upon the jurisdiction of the Court before it is rendered and such validity is determined as of the date of rendition and, if void, the judgment remains so forever and cannot be ratified or revived by any subsequent acts or occurrences

6. The judgment Oregon sent Washington is void on its face and not entitle to enforcement under the Full Faith and Credit Clause. A judgment rendered without Due Process of law may not, under the Full Faith and Credit Clause, be enforced in another state.

7. It is a denial of Due Process to enforce a judgment rendered without jurisdiction and the mere act of fixing a sum due when the court is without jurisdiction is an abortive exercise of judicial power repugnant to the Fourteenth Amendment U.S.C.A. Const. Amend. 14.

CLASS ACTION FACTS

8. On September 19, 1991, Plaintiff had legal domicile and was married to his wife who further had legal domicile and four minor children who individually had legal domicile in Jackson County, Oregon, Address: 1110 Woodrow Lane, Medford, Oregon 97501.

9. On September 20, 1991, a restraining order was pending in Jackson County, Oregon, before Judge L.A. Merryman of the Circuit Court of the State of Oregon.

10. On September 23, 1991, a second petition for restraining order was filed in Douglas County and attached to a dissolution of marriage petition before the dismissal of the Jackson County pending case

11. On October 9, 1991, Plaintiff filed a motion to change venue under ORS 14.070. The motion was denied. ORS 14.070 was filed in the dissolution case.

12. On March 2, 1992, Plaintiff filed a motion for amended response and further filed a counter claim dealing with jurisdictional issues. The court has never, to this date, ruled on or entered an order upon the counterclaim.

13. It should be noted that the petition for dissolution filed in Douglas County on September 23, 1991, has no address of any kind for the filer or the four minor children of that petition, and, in fact, there was no legal domicile in Douglas County for either party.

14. At the trail of dissolution, no jurisdictional facts were mentioned at which time myself, the Respondent, was under self-representation. Nor did the court address the counter claim dealing with the jurisdictional issue.

15. After trail the Circuit Court Judge issued a Notice of Dismissal for Want of Prosecution on April 6, 1992 in accordance with U.T.C.R. 6.020 (2), a twenty-eight day notice.

16. After the expiration of time to submit the decree had expired, the opposing attorney drafted a decree contrary to the Circuit Court Judges ruling and instruction at trial. A District Court Judge then signed the decree and entered a judgment on May 6, 1992 without giving any notice to a pending counterclaim on jurisdictional issues.

17. Plaintiff tried, on three different occasions, to dismiss the decree, all without success. Plaintiff tried to have the decree conformed to the oral ruling given at trial, again without success. Plaintiff's most recent attempt to dismiss decree was August 1994, again without success.

DAMAGES

18. Plaintiff re-alleges all proceedings paragraphs.

19. Plaintiff is financially, mentally and emotionally damaged and without employment at this time. Plaintiff's visitation with the four minor children has been interrupted for the past three years.

20. Plaintiff hopes to gain employment at $6.00 per hour, however, the State of Washington's Support Enforcement

garnishment is $295.00 per week or 50%. Plaintiff cannot live on $3.00 per hour.

21. Plaintiff's earnings for 1992 are $2,623.83, estimated. Plaintiff's earnings for 1993 are $6,725.00, estimated. Plaintiff's earnings for 1994 are $7,205.00, estimated.

22. Plaintiff is now in an emergency situation and in need of help and resolution.

23. Therefore, Plaintiff prays for Judgment as follows:

A. Grant Plaintiff, Dennis R. Nelson, compensatory damages in the sum of $37,000.00 from Terri L. Nelson nka, Terri L. Martin.

B. Declare unconstitutional on its face a Domestic Relations Dissolution Decree, Case No. 91DO1249DS, Douglas County Order.

C. Grant Injunctive Relief against enforcement against Washington State Office of Support Enforcement to stop any and all enforcement in Case No. 1054933 received by the State of Oregon.

D. Pro Se Attorney Fees Pursuant to Civil Rights Attorney Fees Act of 1976, 42, U.S.C. § 1988.

E. Such other and further relief as the court deems appropriate and just.

DATED this 12th day of September 1994.

/S/ DENNIS R. NELSON

Appendix B

FILED AUG 15, 1995

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENNIS R. NELSON

Plaintiff,

v. **Civil No. 94-1097-T**
CONSOLIDATED CASES

TERRI L.NELSON, ET AL
Defendants.

JUDGMENT

Consolidated cases 94-1097-TC and 94-1191-TC are dismissed.

Dated: August 15, 1995.

Donald M. Cinnamond, Clerk

CHRISTY WELLER, DEPUTY
by
/S/ Christy Weller

JUDGMENT DOCUMENT NO 98

Appendix C

FILED MAR 5, 1996

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DENNIS R. NELSON Plaintiff-Appellant, v. TERRI L. NELSON, aka Terri L. Martin; STATE OF OREGON; STATE OF WASHINGTON, Defendants-Appellees	)))))))	No. 95-35890 D.C. No. CV-94-01097-TMC **MEMORANDUM***

Appeal from the United States District Court
for the District of Oregon
Thomas M. Coffin, District Judge, Presiding

Submitted February 27, 1996**

Before: PREGERSON, CANBY and HAWKINS, Circuit Judges.

Dennis R. Nelson appeals pro se the district court's dismissal for failure to state a claim of his 42 U.S.C. § 1983 action against his former spouse, the State of Oregon and the State of Washington. We have jurisdiction pursuant to 28

U.S.C. § 1291, and we affirm because the district court lacked subject matter jurisdiction over Nelson's action.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34 (a); 9th Cir. R. 34-4.

Pg.2

Federal district courts lack subject matter jurisdiction to review the final determinations of a state court in judicial proceedings. Branson v. Nott, 62 F.3d 287, 291 (9th Cir. 1995). "This is true even when the challenge to state court decision involves federal constitutional issues." Id.

In his complaint, Nelson challenges a Domestic Relations Dissolution Decree entered by the Douglas County (Oregon) Circuit Court. The district court lacked subject matter jurisdiction to review Nelson's impermissible collateral attack on prior state court decision. See id. at 291-92; McKay v. Pfeil, 827 F.2d 540, 544-45 (9th Cir. 1987). We therefore affirm the district court's dismissal of Nelson's action.

AFFIRMED. ***/S/ Cathy A. Catterson***

Clerk of Court

MAR 27, 1996

Appendix D

FILED APR 1,1996
MANDATE ISSUED
MAR 27, 1996

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 95-3589
CT/AG#: CV-94-01097-TMC

DENNIS R. NELSON

Plaintiff - Appellant

v.

TERRI L. NELSON, AKA Terri L. Martin; STATE OF OREGON STATE OF WASHINGTON;

Defendants - Appellees

APPEAL FROM the United States District Court for the District of Oregon (Eugene) .

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Oregon (Eugene) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is **AFFIRMED**.

Filed and entered **March 5, 1996**
COSTS TAXED ***/s/ Cathy A. Catterson***
Clerk of Court

Appendix E

FILED
1994 NOV 22 A 11:28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENNIS R. NELSON Plaintiff,	)	
	)	Civil No. 94-1097-AS
v.	)	
	)	**FINDINGS AND**
TERRI L. NELSON nka TERRI L. NELSON; STATE OF OREGON; AND STATE OF WASHINGTON Defendant	)	**RECOMMENDATION**

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Attorney for defendant Martin

ASHMANSKAS, Magistrate Judge :

Defendant Terri L. Nelson, nka Terri L. Martin ("Defendant") moves to dismiss the complaint filed by Dennis R. Nelson ("Plaintiff") for inadequate service and for failure to state a claim upon which relief can be granted. Plaintiff has

failed a motion for summary judgment and a motion for attorney fees. While Plaintiff does not designate his summary judgment as one for partial summary judgment, it is clear from the contents of the motion, memorandum and declaration that Plaintiff's summary judgment motion is directed solely at defendant. Accordingly, the court will treat Plaintiff's summary judgment as a motion for partial summary judgment against Defendant only.

Background

Plaintiff, who is appearing pro se, filed this action "under title 42 U.S.A. § 1983 for redress of the Equal Protection Clause and due Process Clause of the Fourteenth Amendment to the United States Constitution." Plaintiff alleges that Defendant, the circuit Court of the State of Oregon for the County of Douglas and the State of Washington Office of Support Enforcement for Clark County, violated rights guaranteed to Plaintiff under the First and Fourteenth Amendments. This action appears to contest the validity of a number of judgments entered by various Douglas county circuit court judges in the dissolution of defendant's marriage to Plaintiff.

Legal Standard

Inadequate Service

Service may be effected on a individual by personal delivery, delivery at the usual place of abode, or delivery through an Authorized agent. Fed. R. Civ. P. 4(e) (2). A plaintiff may also serve an individual by mailing a copy of the

complaint along with additional information and forms and requesting the defendant to waive service of summons. Fed. R. Civ. P. 4 (d) (1). Service upon state, municipal corporation or other governmental organization may be completed by "delivering a copy of the summons and of the complaint to its chief executive officer." Fed. R. Civ. P. 4 (j) (2).

The federal rules also permit service upon individuals and governmental organizations in accordance with state procedural rules. Fed. R.. Civ. P. 4(e) (1) And Fed R Civ. P. 4(j)(2). The State of Oregon allows service by mail only in limited circumstances. See O.R.C.P. 7D (2) (d). Oregon courts strictly construe the service requirement even though it may be shown that defendants had actual knowledge of the filing of the complaint. Baker v. Foy, 310 Or. 221, 227 (1990).

Rule 4 (m) of the Federal Rules of civil Procedure provides, in pertinent party, that:

> **If service of the summons and complaint is not made upon a defendant with 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good clause for the failure, the court shall extend the time for service for an appropriate period.**

"Good cause" has been defined "to require at least as much as would be required to show excusable neglect [under Rule 6 (b) (2)], as to which simple inadvertence or mistake of counsel or ignorance of the rules usually does not suffice. "Green v. Humphrey Elevator and Truck Co., 916 F.2d 877, 884 (3rd Cir. 1987) quoting Winters v. Teledyne Movible Offshore, Inc., 776 F.2d 1304, 1306 (5th Cir. 1985) cited with approval in Worrell v. B.F.oodrich Co., 845 F. 2d 840 (9th cir.(emphasis in original).

Failure to state a Claim

Courts grant motions to dismiss under Rule 12 (b) (6) only if "it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." Gibson v. United States, 781 F.2d 1334, 1347 (9th cir. 1986), cert. Denied, 479 U.S. 1054 (1987). The review is limited to the complaint, and all allegations of material fact are taken as true and viewed in the light most favorable to the non-moving party. Cassettari v. County of Nevada, 824 F.2d 735, 737 (9th Cir. 1987).

In civil rights cases involving a plaintiff appearing pro se, this court construes the pleadings liberally and affords the plaintiff the benefit of any doubt. McGuckin v. Smith, 974 F 2d. 1050, 1055 (9th cir. 1992); Karim-Panahi v. Los Angeles Police Dept., 839 2d 621, 623 (9th Cir. 1988). However, a liberal interpretation of the complaint may not supply essential elements of the claim not initially pled. Pena v. Gardner, 976 F. 2d 469 (9th Cir. 1992).

Before dismissing a pro se civil rights complaint for failure to state a claim, this Court supplies the plaintiff with a

statement of the complaint's deficiencies. McGuckin, 974 f 2d, at 1055; Karim-Panahi, 839 F. 2d at 623-24; Eldridge v. Block, 832 F. 2d1132, 1136 (9th cir. 1987). A pro se litigant will be given leave to amend his or her complaint unless it is absolutely clear that the deficiencies of the complaint cannot be cured by amendment. Karim-Panahi, 839 F.2d at 623; Noll v. Carlson, 809 f.2d 1446, 1447 (9th Cir. 1987).

Discussion

Inadequate Service

Plaintiff filed this action on September 12, 1994. On the same day, this court authorized Plaintiff to proceed in *forma pauperies* and ordered the clerk to issue process and the United States Marshal's Office to serve the summons and complaint upon the filing of the necessary documents by Plaintiff. Plaintiff immediately filed the documents and the Marshal's Office forwarded the summons and complaint to the designated defendants by certified mail on September 15, 1994. Defendant and her legal counsel received the summons and complaint on September 16, 1994.

While it is evident that defendant has not been properly served in this action, dismissal of the action under Fed. R. Civ. P. 4 (m) for lack of service is not appropriate until January 10, 1995, which is 120 days from the date the complaint was filed. In light of the fact that the service defects can be cured within the 120-day time period, that Plaintiff is proceeding pro se in this action and is relying on the United Sates Marshal's Office for proper service and that Plaintiff's claims against defendant can be dismissed with prejudice for failure to sate a claim, the court recommends denying Defendant's motion to dismiss for lack of service.

This act should not be viewed by the parties as a finding by the court that the parties have been properly served, rather, it is an attempt by the court to resolve these motions with the greatest judicial economy.

Failure to State a Claim

42 U.S.C. § 1983 provides, in pertinent part, that:

> **Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State... subjects, or causes to be subjected, any citizen of the United States... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.**

"To state a cause of action under § 1983 it is essential that the defendant has acted under color of state law." Chrisman v. Sisters of St. Joseph of Peace, 506 f.2d 308, 312 (9th cir. 1974) (citing Adickes v. S. H. Kress & Co., 398 U.S. 144, 188 (1970) (Brennan, J., concurring opinion)).

Plaintiff has failed to allege that Defendant, a private citizen was acting under color of state law. Defendant is Plaintiff's ex-spouse and is the mother of Plaintiff's children. It is evident from the face of Plaintiff's complaint that Defendant is named in the complaint solely because of her relationship with Plaintiff and not because she is an employee of either the Circuit court of the Sate of Oregon for the County of Douglas or the State of Washington Office of

Support Enforcement for Clark County. Plaintiff's allegations against defendant are fatally deficient and it is clear that the deficiencies cannot be cured by amendment. Consequently, defendants motion to dismiss should be granted and the dismissal should be with prejudice. In light of this recommendation, Plaintiff's motions for summary judgment and attorneys fee should be denied as moot.

Conclusion

Defendant' motion (12) to dismiss for failure to state a claim should be GRANTED. Plaintiff's motion (16) for summary judgment and motion (18) for attorneys fees should be DENIED as moot.

DATED this 21st day of November, 1994

/S/ DONALD C. ASHMANSKAS
Donald C. Ashmanskas
United States Magistrate Judge

Appendix F

FILED
1994 DEC 28 PM 2:43

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENNIS R. NELSON Plaintiff, v. TERRI L. NELSON nka TERRI L. NELSON; STATE OF OREGON; AND STATE OF WASHINGTON Defendant	))))))))))	Civil No. 94-1097-AS **ORDER**

REDDEN, Judge:

Magistrate Judge Ashmanskas filed his findings and Recommendation on November 22, 1994. The matter is now before me pursuant to 28 U.S.C. section 636 (b) (1) (B) and Fed. R. Civ. P. 72 (b). When a party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a de novo determination of that portion of the Magistrate's report. 28 U.S.C. 636 (b) (1) (B); McDonnell Douglas Corp. v. Commodore Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S.C. 920 (1982).

Plaintiff has timely filed objections. I have, therefore, given the file of this case a de novo review. I ADOPT the Magistrate's Findings and Recommendation (doc. 35) that defendant's motion to dismiss (doc 12) for failure to state a claim is granted. Plaintiff's motion for summary judgment (doc 16) and motion for attorneys fees (doc 18) are denied as moot.

IT IS SO ORDERED.

Dated this 28 day of December, 1994.

/S/ JAMES A. REDDEN
Jame A Redden
United States District Judge

Appendix G

FILED MAR 16, 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENNIS . NELSON

Plaintiff,

V.

Civil No 94-10978-AS
LEAD
Civil No-AS 94-1191
consolidated

TERRI L NELSON, nka TERRI L, MARTIN; STATE OF OREGON; AND STATE OF WASHINGTON,

FINDINGS AND RECOMMENDATION

Defendants,

ASHMANSKAS, Magistrate Judge:

Defendant State of Oregon ("Defendant") moves to dismiss the complaint filed by plaintiff Dennis R. Nelson ("Plaintiff") pursuant to Fed. R. Civ. P. 12 (b) (6) on the grounds that it fails to state a claim against Defendant. Defendant asserts that Plaintiff's complaint is deficient because: 1) Plaintiff's claims against Defendant are barred by the eleventh Amendment; 2) Defendant is not a "person" as required for a claim under 42 U.S.C. § 1983; and 3) Plaintiff has failed to allege any facts to establish that the Douglas County Circuit Court lacked jurisdiction over Plaintiff's divorce action.

Appendix G

Background

Plaintiff, who is appearing pro se, filed this action "under title 42 U.S.C. § 1983 for redress of the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment to the United States Constitution." Plaintiff alleges that Defendant and the State of Washington Office of support Enforcement for Clark County, violated rights guaranteed to plaintiff under the First and Fourteenth Amendments. This action appears to contest the validity of a number of judgments entered by various Douglas County Circuit Court judges in the dissolution of Defendant's marriage to Plaintiff based on an asserted lack of jurisdiction by the Douglas County Circuit Court over Plaintiff's divorce action. Plaintiff ask this court to declare the dissolution decree unconstitutional on its face and for attorney fees pursuant to 42 U.S. C. § 1988.

Legal Standard

Courts grant motions to dismiss under Rule 12 (b) (6) only if "it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." Gibson v. United States, 781 F.2d 1334, 1347 (9th Cir. 1986), cert. Denied, 479 U.S. 1054 (1987). The review is limited to the complaint, and all allegations of material fact are taken as true and viewed in the light most favorable to the non-moving party. Cassettari v. County of Nevada, 824 F.2d 735, 737 (9th Cir. 1987).

In civil rights cases involving a plaintiff appearing pro se, this court construes the pleadings liberally and affords the plaintiff the benefit of any doubt. McGuckin v. Smith, 974 F.2d 1050, 1055 (9th Cir. 1992); Karim-Planahi v.Los Angeles Police Dept., 839 F.2d 621, 623 (9th Civ. 1988). However, a liberal interpretation of the complaint may not supply

essential elements of the claim not initially pled. Pena v. Gardner, 976 F.2d 469 (9th Cir. 1992). Before dismissing a pro se civil rights complaint for failure to state a claim, this court supplies the plaintiff with a statement of the complaint's deficiencies. McGuckin, 974 F.2d at 1055; Karim-Panahi, 839 F.2d at 623-24; Eldridge v. Block, 832 F.2d 1132, 1136 (9th Cir. 1987). A pro se litigant will be given leave to amend his or her complaint unless it is absolutely clear that the deficiencies of the complaint cannot be cured by amendment. Karim-Panah,839 f.2d at 623; Noll v. Carlson, 809 f.2d 1446, 1447 (9th Cir. 1987).

Discussion

Defendants assert that they are entitled to sovereign immunity under the Eleventh Amendment and rely on Ford Motor Co. V. Department of Treasury of Indiana, 323 U.S.459 (1945). An action against a state or a state officer in his official capacity is barred by he Eleventh Amendment in the absence of a statutory waiver of immunity by the state. Id. At 462. Plaintiff has failed to provide the court with any authority to establish that defendant has waived its sovereign immunity in this instance. Consequently, the court finds that it lacks jurisdiction over Plaintiff's claims against defendant.

Even if the court found that Defendant had waived its sovereign immunity, Plaintiff has failed to state a claim for relief under 42 U.S.C. § 1983. 42 U.S.C. § 1983 provides, in pertinent part, that:

> **Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State... subjects, or causes to the subjected, any citizen of the United States... to the deprivation of any rights, privileges, or immunities secured by the**

Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

A state is not a "person" subject to a suit within the meaning of 42 U.S.C. § 1983. Will v. Michigan dept. Of State Police, 491 U.S. 58 (1989); Williford v. California, 352 F.2d 474 (1965). However, individual state officials who are acting within their official capacity may be sued under 42 U.S.C. § 1983 if the plaintiff is seeking solely inductive relief.

Plaintiff is unable to state a claim under 42 U.S.C. § 1983 against Defendant. Accordingly, Plaintiff's complaint should be dismissed with regard to Defendant. Plaintiff' could state a claim for injunctive relief under 42 U.S.C. § 1983 against the individual judges which Plaintiff alleges were involved in the divorce action. However, any claim against the
judges would relate directly to actions taken in the divorce action and would be barred by judicial immunity. Pragastis v. Clackamas County, 305 Or. 419 (1988). The court finds that Plaintiff is unable to state a claim against defendant or any judicial officer and recommends that Plaintiff's claims against defendant be dismissed with prejudice.

Conclusion

Defendant's motion (56) to dismiss should be **GRANTED**.

Dated this 15 day of March, 1995.

/S/ DONALD C. ASHMANSKAS
Donald C. Ashmanskas
United states Magistrate Judge

Appendix H

FILED APR 10, 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENNIS R. NELSON,	)	
	)	
Plaintiff,	)	Civil No. 94-1097-AS
vs.	)	
	)	
TERRI L. NELSON, aka	)	**ORDER**
TERRI L.MARTIN;	)	
STATE OF OREGON,	)	
STATE OF WASHINGTON	)	
	)	
Defendants.	)	
	)	

REDDEN, Judge:

Magistrate Judge Ashmanskas filed his findings and Recommendation on March 16,1995. The matter is now before me pursuant to 28 U.S.C. section 636 (b) (1) (B) and Fed. R. Civ. P. 72 (b). When a party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a de novo determination of that portion of the Magistrate's report. 28 U.S.C. section 636 (b) (1) (B); McDonnell Douglas Corp. v. Commodore Business Machines, 635 F.2d 1309, 1313 (9the Cir. 1981), cert. Denied, 455 U.S. 920 (1982).

Plaintiff has timely filed objections. I have, therefore, given the file of this case a de novo review. I ADOPT the Magistrate's Findings and recommendation (doc. 69) that the defendant State of Oregon's motion to dismiss (doc 56) is granted with prejudice.

Plaintiff's objection contains a request to amend his complaint pursuant to Fed. R. Civ. P. 15(a) to allege only declaratory and injunctive relief and strike any claim for money damages. Even with the amendment I find that plaintiff is unable to state a claim against the defendant or any judicial officer. As Judge Ashmanskas held, plaintiff could state a claim for inductive relief pursuant to 42 U.S.C. § 1983 against the individual judges which plaintiff alleges were involved in the divorce action, however, any claim against the judges would relate directly to actions taken in the divorce proceeding and would be barred by judicial immunity. Pragastis v. Clackamas County, 305 OR. 419, 752 P.2d 302 (1988).

IT IS SO ORDERED.

Dated this 10 day of April, 1995.

/S/ JAMES A. REDDEN
James A. Redden
United States District Judge

FILED APR 17, 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENNIS . NELSON

Plaintiff,

Civil No 94-10978-AS

V.

TERRI L NELSON, nka TERRI L, MARTIN; STATE OF OREGON; and STATE OF WASHINGTON,

FINDINGS AND RECOMMENDATION

Defendants.

ASHMANSKAS, Magistrate Judges:

Defendant State of Washington ("Defendant") moves to dismiss the complaint filed by plaintiff Dennis R. Nelson ("Plaintiff") pursuant to Fed. R. Civ. P. 12 (b)(6) on the grounds that it fails to state a claim against defendant. Defendant asserts that Plaintiff's complaint is deficient because: 1) Defendant is not a "person" as required for a claim under 42 U.S.C. § 1983; 2) Plaintiff's claims against Defendant are barred by the Eleventh Amendment; 3) Plaintiff fails to state a claim under § 1983; 4) this court lacks jurisdiction over Plaintiff's claim; and 5) the doctrine of abstention requires dismissal of this action.

Background

Plaintiff, who is appearing pro se, filed this action "under title 42 U.S.C. § 1983 for redress of the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment to the United States Constitution." Plaintiff alleges that Defendant violated rights guaranteed to Plaintiff under the First and Fourteenth Amendments. This action appears to contest the validity of a number of judgments entered by various Douglas county Circuit Court judges in the dissolution of Defendant Terri L. Nelson's marriage to Plaintiff based on an asserted lack of jurisdiction by the Douglas County circuit Court over Plaintiff's divorce action as well as Defendant's issuance of a garnishment of Plaintiff's wage pursuant to the Douglas county judgments. Plaintiff asks this court to grant injunctive relief prohibiting defendant from enforcing the garnishment or other collection actions and for attorney fees pursuant to 42 U.S.C. § 1988.

Legal Standard

Courts grant motions to dismiss under Rule 12 (b) (6) only if "it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." Gibson v United States, 781 F.2d 1334, 1347 (9th Cir. 1986), cert. Denied, 479 U.S. 1054 (1987). The review is limited to the complaint, and all allegations of material fact are taken as true and viewed in the light most favorable to the non-moving party. Cassettari v. County of Nevada, 824 F.2d 735, 737 (9th Cir. 1987).

In civil rights cases involving a plaintiff appearing pro se, this court construes the pleadings liberally and affords the plaintiff the benefit of any doubt. McGuckin v. Smith, 974

F.2d 1050,1055 (9th Cir. 1992); Karim-Panahi v. Los Angeles Police dept.,839 F.2d 621, 623 (9th Cir. 1988). However, a liberal interpretation of the complaint may not supply essential elements of the claim not initially pled. Pena v. Gardner, 976 F.2d 469 (9th Cir. 1992).

Before dismissing a pro se civil rights complaint for failure to state a claim, this court supplies the plaintiff with a statement of the complaint's deficiencies. McGuckin, 974 F.2d at 1055; Karim-Panahi, 839 F.2d at 623-24; Eldridge v. Block, 832 F.2d 1132, 1136 (9th Cir. 1987). A pro se litigant will be given leave to amend his or her complaint unless it is absolutely clear that the deficiencies of the complaint cannot be cured by amendment. Karim-Panahi, 839 F.2d at 623; Noll v. Carlson, 809 F.2d 1446, 1447 (9th Cir. 1987).

Discussion

Defendant asserts that it is entitled to sovereign immunity under the Eleventh Amendment and relies on Ford Motor Co. V. Department on Treasury of Indiana, 323 U.S. 459 (1945). An action against a state or a state officer in his official capacity is barred by the Eleventh Amendment in the absence of a statutory waiver of immunity by the state. Id. At 462. Plaintiff has failed to provide the court with any authority to establish that defendant has waived its sovereign immunity in this instance. Consequently, the court finds that it lacks jurisdiction over Plaintiff's claims against Defendant.

Even if the court found that Defendant had waived its sovereign immunity, Plaintiff has failed to state a claim for relief under 42 U.S.C. § 1983. 42 U.S.C. § 1983 provides, in pertinent part, that:

> **Every person who, under color of any statute, ordinance, regulation, custom, or**

> **usage, of any State... subjects, or causes to be subjected, any citizen of the United States... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.**

A state is not a "person" subject to a suit within the meaning of 42 U.S.C. § 1983. Will v. Michigan Dept. Of state Police, 491 U.S. 58 (1989); Williford v. California, 352 F.2d 474 (1965). However, individual state officials who are acting within their official capacity may be sued under 42 U.S.C. § 1983 if the plaintiff is seeking solely injunctive relief.

Plaintiff is unable to state a claim under 42 U.S.C. § 1983 against defendant. Accordingly, Plaintiff's complaint should be dismissed with prejudice with regard to Defendant.

Conclusion

Defendant's motion (70) to dismiss should be **GRANTED**.

DATED this 17 day of April, 1995.

/S/ DONALD C. ASHMANSKAS
DONALD C. ASHMANSKAS
United States Magistrate Judge

Appendix J

FILED MAY 17, 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENNIS R. NELSON,	)	
	)	
Plaintiff,	)	Civil No. 94-1097-AS
vs.	)	
	)	
TERRI L. NELSON, aka	)	**ORDER**
TERRI L.MARTIN;	)	
STATE OF OREGON,	)	
STATE OF WASHINGTON	)	
	)	
Defendants.	)	
	)	

REDDEN, Judge:

Magistrate Judge Ashmanskas filed his Findings and Recommendation on April 17, 1995. The matter is now before me pursuant to 28 U.S.C. § 636 (b) (1) (B) and Fed. R. Civ. P. 72 (b).

When a party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a de novo, determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636 (b) (1) (B); McDonnell Douglas Corp. Commodore Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981). 656 F.2d 1309, 1313 (9th Cir. 1981). Cert. Denied , 455 U.S. 920 (1982).

Appendix J

Plaintiff has timely filed objections. I have, therefore, given the file of this case a de novo review. I ADOPT the Findings and Recommendation (doc. #80) that the State of Washington's motion to dismiss (doc #70) be granted.

IT IS SO ORDERED.

Dated this 17 day of May, 1995

/S/ JAMES A. REDDEN

James A. Redden

United States District Judge